

Appendix H to Part 619

BASIC AGREEMENT BETWEEN THE MILITARY TRAFFIC MANAGEMENT COMMAND AND BROKERS GOVERNING THE TRANSPORTATION OF GENERAL COMMODITIES FOR AND ON BEHALF OF THE U.S. DEPARTMENT OF DEFENSE

1. The undersigned, who is duly authorized and empowered to act on behalf of _____, a broker, hereinafter called the broker, as a prerequisite for consideration for participation in the transport of general commodities as a broker, for the U.S. Department of Defense (DOD) agrees to comply with all requirements, terms and conditions as set forth in this Agreement. Noncompliance with any provision of this Agreement will be sufficient grounds for immediate revocation of this broker's privilege to participate in the movement of DOD freight. For the purpose of this Agreement a broker is defined as a person or company who, for compensation, performs transportation for DOD shippers the broker undertakes to carry and deliver safely and with reasonable diligence the freight shipments of the DOD, according to the terms and conditions of transportation contracts, rate tenders and Government bills of lading (GBLs) negotiated between the Military Traffic Management Command (MTMC) and the broker.

2. Approval and Revocation.

a. The broker understands that its initial approval and retention of approval are contingent upon establishing and maintaining to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include equipment, personnel, facilities, and finances to handle traffic anticipated by DOD/MTMC under the broker's proposed scope of operations in accordance with the service requirements of the shipper.

b. The broker understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The broker further understands that it is not authorized to participate in any traffic which requires a Transportation Protective Service (TPS).

c. In addition to the initial evaluation, the broker agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this Agreement to confirm continued eligibility.

d. The broker agrees and certifies that neither the owners, company, corporate officials, nor any affiliation or subsidiary thereof are currently debarred or suspended, disqualified by a MTMC General Freight Board, or has been placed in non-use by MTMC from doing business with the DOD.

3. Lawful Performance.

a. The broker agrees to comply with all applicable Federal, State, municipal, and other local laws and regulations. No fines, charges, or assessments for overloaded vehicles or other violations of applicable laws and regulations will be passed to, or be paid by any agency of the Federal Government.

b. The broker agrees to keep current and on file with HQMTMC a list of all underlying carriers (subcontractors) that the broker intends to hire for the transport of DOD freight shipments. This list will contain, as a minimum, corporate office addresses, telephone numbers and a designated 24-hour on-call point of contact in the event of an accident or emergency situation. MTMC can direct broker not to use specific carriers in the movement of DOD freight shipments.

c. The broker further agrees and certifies that it will not use any carrier which has been debarred, suspended by the Government or which has been placed in non-use or disqualified by MTMC from doing business with the DOD for the movement of any DOD freight shipments.

4. **Operations.** The broker agrees and certifies that it is operating as a broker, as defined herein. If incorporated, evidence of incorporation, bearing the official seal of the state in which filed must be on file with HQMTMC, ATTN: MTOP-QQ. Articles of Incorporation, listing all officers of the corporation are attached and certified to be true, correct and current.

5. Insurance.

a. The broker agrees to maintain a minimum of \$1,000,000 public liability insurance and \$250,000 per shipment cargo insurance for loss and damage of Government freight. A copy of the certificate of insurance must be file with HQMTMC, ATTN: MTOP-QQ, prior to any performance of service by the broker.

b. The insurance must be carried in the name of the broker and will be in force at all times while this Agreement is in effect or until such time as the broker cancels all tenders. The broker agrees to ensure that the policies include a provision requiring the insurer to notify MTMC prior to any performance of service by this carrier. Changes, renewals, and cancellation notices must also be sent to HQMTMC, ATTN: MTOP-QQ, 5611 Columbia Pike, Falls Church, Virginia 22041-5050. The Government will be given 30 days notice prior to any cancellation or material changes in insurance coverages.

- c. The insurance underwriter must have a policyholder's rating of "C" or better in the Best's Insurance Guide listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. Self insurance will not be accepted.
- 6. Performance Bond.** The broker agrees to provide MTMC with a Performance Bond. The bond secures performance and fulfillment of the broker transportation obligation. It will cover default, abandoned shipments, bankruptcy and re-procurement costs. The bond will not be utilized for operational problems such as late pick up or delivery, excessive transit time, refusals, no shows, improper/inadequate equipment or claims for lost or damaged cargo. The bond must be issued by a surety company listed in the Fiscal Service Treasury Department Circular 570. The sum of the bond shall be no less than \$100,000. The bond must be completed on the form provided by MTMC and will be continuous until canceled. MTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent, by the surety company, is required with the initial application package. Upon MTMC approval, the broker agrees to submit the performance bond before the Tender of Service will be accepted.
- 7. Safety.**
- a. The broker agrees not to use any carrier that has an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an intrastate motor carrier, with the appropriate state agency.
- b. Shipments will be delivered in direct service without delay to the destination shown on the GBLs unless consignee or consignor directs diversion of the shipment to a different destination. Deliveries will be made during the shipper's normal business hours.
- c. The broker agrees not to divulge any information to unauthorized persons concerning the nature and movements of any shipment tendered to it.
- d. Broker agrees to notify the consignee and consignor named by the GBL or CBL of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, time and place of occurrence, and other pertinent details. Upon request, the broker agrees to furnish MTMC a copy of accident reports submitted to the Department of Transportation on Form MCS 50-T (Property).
- e. The broker agrees to have in place a company-wide Safety Management Program. The broker safety program will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company-wide or terminal level may be subject to reevaluation by DOD representatives. The broker further agrees to permit unannounced safety inspections of its facilities, terminals, equipment, employees, and procedures by DOD civilian, military personnel or DOD contract employees.
- 8. Reserved.**
- 9. Equipment.** The broker agrees to ensure equipment is spotted for loading or unloading at the time and place requested. The Government reserves the right to reject the utilization of any equipment placed for loading by the broker
- 9. Equipment.** The broker agrees to ensure equipment is spotted for loading or unloading at the time and place requested. The Government reserves the right to reject the utilization of any equipment placed for loading by the broker if it does not, upon inspection, meet specifications and requirements for the participating shipment involved (size, cube, cleanliness, mechanical condition, etc.)
- 10. Shipment.** The broker agrees to provide, at no additional cost to the government, the status of any shipment within 24-hours after an inquiry is made. Further, the broker agrees to not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.
- 11. Documentation.**
- a. The broker agrees to accept GBLs on which freight charges will be paid by the Government, and to be bound by all terms stated therein.
- b. The broker will comply with the documentation prelodgement procedures in effect at Military Ocean Terminals or the installation, when cargo is consigned for further movement overseas. (Prelodgement is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal to permit preparation of the terminal documentation.) Instructions will be provided by the consignor to furnish certain data at least 24-hours in advance of cargo delivery to the terminal.
- 12. Loss or damage.** The broker agrees to be liable for loss or damage to cargo in the same condition as received at origin, except loss or damage to cargo caused by act of God, public enemy act or omission of shipper, inherent vice or nature of commodity or act or mandate of public authority. The broker agrees to promptly settle claims from loss or damage. The broker also agrees to provide the status of any shipment tendered to them within 24-hours after an inquiry is made.
- 13. Standard Tender.**
- a. The broker agrees to comply with the tender preparation and filing instructions in applicable freight traffic rules publication issued by MTMC. The broker understands that MTMC will reject tenders not in compliance with these instructions.
- b. The broker agrees to provide a street address where the company office is located in lieu of a post office box number. Broker agrees to provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The broker agrees to also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of this broker.

c. The broker understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364-R), or the applicable MNC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or non-use until corrections are made. The issuing broker will be advised when tenders are removed under these circumstances.

14. Rates.

a. The broker agrees to transport Government shipments at its lowest effective rate named in the tender applicable on the commodity transported, whether or not the rate tender is referenced on the GBL.

b. Broker agrees to publish guaranteed through rates for at least 30 days. The broker must file rate tenders with MTMC, HQ, Eastern Area, ATTN: MTE-IN, Bayonne, New Jersey 07002-5302. The broker must publish all rates, charges, and accessorial services on a "Department of Defense Standard Tender of Freight Services" MT Form 364-R and must comply with the tender preparation instructions. (Only services annotated with a rate or charge in the tender will be paid by the shipper.)

c. The broker agrees to promptly refund all uncontested overcharges to the Government and authorizes the Government to deduct the amount of overcharges from any amount subsequently found to be due the broker.

d. The Government reserves the right to pursue administrative claims directly with the brokers under the Transportation Act of 1940, 31 U.S.C. 3726, or other authorities.

15. Broker Performance.

a. Broker agrees that broker's equipment, performance and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in this Agreement. The broker fully understands its obligation to remain current in its knowledge of service standards. The broker accepts the Government's right to revoke approval, declare ineligible, non-use, or disqualify the broker for unsatisfactory service for any operating deficiency, noncompliance with the terms of this Agreement or terms of any negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determining the relationship of the parties, or for the publication of or assessment of unreasonable rates, charges, rules, descriptions classifications, practices, or other unreasonable provisions of tariffs/ tenders. Rules governing the broker's performance under the Carrier Performance Program are found in MTMC Regulation 15-1, and Defense Transportation Regulation, Chapter 207, Army Regulations 55-355 DTMR. If a broker is removed or disqualified for 6 months or more, it will have to be re-qualified.

b. Failure or noncompliance by the broker with any of the terms or conditions of service will constitute a breach of this Agreement. The Government reserves the right to disqualify the broker for unsatisfactory service until such time as the broker reestablished, to the satisfaction of DOD, that the operating or other deficiency(ies) has been corrected.

16. General Provisions. The broker must possess a valid Standard Broker Alpha Code (SCAC). When a company has operating divisions, each with its own unique SCAC, each such division is required to execute a separate agreement with MTMC.

17. Terms of the Agreement.

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of approval by MTMC, until terminated. Termination is effective upon receipt of written notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The broker agrees to immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and broker name. Broker understands that failure to notify MTMC shall be grounds for immediate revocation of the broker's approval and their participation in the movement of DOD freight.

18. Additional Specialized Requirements. The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for other types of service and/or commodities.

19. Inquiries. Inquiries may be referred to: Commander, MTMC, ATTN: MTOP-QQ, 5611 Columbia Pike, Falls Church, Virginia 22041-5050.

20. Broker Acknowledgment and Acceptance. The certifying broker official agrees to ensure that the appropriate company officials and employees are familiar with the requirements, terms and conditions of this Agreement and are in full compliance with the applicable provisions herein. Any information found to be falsely represented in the Motor Broker Qualification Form, the attachments or during the qualification procedures, to include additional requirements of this Agreement, shall be grounds for automatic revocation of this Agreement and immediate non-use of the broker, the affiliated companies, division and entities. I, _____ verify under penalty of perjury under the laws of the United States of America, that the information contained in the broker qualification application packet and this Agreement is true, correct and complete. If representing a company or organization, I certify that I am qualified and authorized to offer this information. I know that willful misstatements or omissions of material facts constitute Federal criminal violations punishable under 18 U.S.C. 1001 by up to 5 years imprisonment and fines up to \$10,000 for each offense, or punishable as perjury under 18 U.S.C. 1621 by fines up to \$2,000 or imprisonment up to 5 years for each offense. Further, I understand the requirements of this Agreement and on behalf of: _____, agree to comply with the terms and conditions contained herein.

_____ (Signature of Broker Official and Title)

Date: _____

Address: _____

Telephone Number: _____

24-Hr Emergency Number: _____

Military Traffic Management Command

Acknowledgment/Acceptance Signature and Title: _____

Date Approved: _____